

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1991 OF 2003

Union of India ... Petitioner

Vs.

Shri. Lakhama Dhakalia & anr. Respondents

Mr. Suresh Kumar for Petitioner.

Mr. Jai Prakash Sawant for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 29, 2004

P.C.

. Petition not on Board. By consent of the parties, taken on board and heard forthwith.

. The respondent workman contended that the enquiry was not fair and proper and had not complied

with service conditions. The learned Industrial Tribunal on considering the evidence on record by its Part I award dated 21.9.2001 was pleased to hold that the Enquiry conducted was against the principles of natural justice and consequently set aside the enquiry. The Management was allowed to lead evidence to justify its action. The record would show that no evidence was led on behalf of the Management. Pursuant to that Part II Award came to be made on 13.9.2002 whereby the Petitioners were directed to reinstate the workman with full backwages. It is this award which is subject matter of the present petition.

. On behalf of the Petitioner, learned counsel points out that the learned Tribunal has given no reasons as to why full back wages be awarded assuming that the petitioners had led no evidence in support of the charge of habitual absenteeism against respondent herein. On the other hand on behalf of the Respondent workmen, their learned counsel contends that in the absence of any material to show that the Respondent was gainfully employed and once charge was not proved, the learned tribunal was right in awarding reinstatement with back wages. The learned counsel however, states that if the petitioners reinstate respondent, respondent does not mind giving up his claim to half of the back wages. Considering the above and considering that the Respondent belongs to schedule tribe and Group IV employee, ends of justice will be met if the following order is passed :

. The Award dated 13.9.2002 is partly modified. In as much as awarding of reinstatement is not interfered with. However, the Petitioners are directed to pay half back wages instead of full back wages with continuity of service for the purpose of pensionary and other terminal benefits. The respondent to report the office of the Bombay Central D.R.M. Office, Court Cell on 5th November, 2004 at 11.00 a.m. The Petitioners to reinstate

the respondent at any rate not later than 1st
January, 20005. Till reinstatement, respondent
would be entitled to half back wages. Motion made
absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)